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REQUEST FOR THE INCLUSION OF AN ITEM IN THE PROVISIONAL AGENDA OF THE FIFTY-SECOND SESSION

DRAFT GUIDING PRINCIPLES FOR INTERNATIONAL NEGOTIATIONS

Letter dated 12 June 1997 from the Permanent Representative of Mongolia to the United Nations addressed to the Secretary-General

Upon instructions from my Government and in accordance with rule 13 of the rules of procedure of the General Assembly, I have the honour to request the inclusion in the agenda of the fifty-second session of the General Assembly of an item entitled "Draft guiding principles for international negotiations" as a sub-item under the item entitled "United Nations Decade of International Law".

In accordance with rule 20 of the rules of procedure of the General Assembly, an explanatory memorandum concerning the request as well as a draft resolution are attached as annexes to the present letter. Bearing in mind the nature of the question, it is proposed that the item be considered in the Sixth (Legal) Committee of the General Assembly.

I further have the honour to request that the present letter and its annexes be circulated as a document of the General Assembly.

(Signed) J. ENKHSAIKHAN
Ambassador
Permanent Representative

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ANNEX I

Explanatory memorandum

The end of the cold war is creating favourable political conditions for broadening and deepening international cooperation in the rapidly globalizing world. The cold war, represented by the zero-sum game mentality, where some gain at the expense of others, is giving way to more positive trends and constructive attitudes, driven by the realities of an increasingly interdependent world based on advancing the interests of all. Such notions as might is right or that force is the ultimate form of power are being widely rejected. Rejection of the use or threat of use of force implies greater recourse to cooperation and negotiation. On the other hand, democratization of international relations cannot be confined to having States voice their views or grievances. The new international order, to be just, democratic and based on respect for the sovereign equality of all States, should ensure equal and fuller participation of States in actual decision-making on issues that affect their interests.

International negotiations, as the most flexible and effective means of bilateral and multilateral cooperation between States, today play an increasingly important role in the management of international relations, the peaceful settlement of disputes and the creation of new international norms of conduct of States. The role of negotiations will continue to grow in the future. While the international community is regulating and, in some cases, has even codified many aspects of diplomatic relations and conduct, the one type of diplomatic activity that has not yet been affected is the conduct of international negotiations.

Legally, international negotiations are understood to be conducted on the basis of the principles of contemporary international law. However, lack of clear rules concerning the conduct of international negotiations gives rise to or provides room for different interpretations of even such generally recognized principles as the sovereign equality of States, non-discrimination, non-interference, negotiation in good faith, cooperation of States, the non-use of force and so on. As international practice amply demonstrates, changing the agreed or implied rules of negotiations or backtracking from previous agreements complicates subsequent negotiations. Lack of an atmosphere of cooperation and goodwill for the conduct of negotiations or attempts to achieve a unilateral advantage impede fruitful negotiations. Raising irrelevant preconditions and creating obstacles to ongoing negotiations also adversely affect negotiations and the spirit of goodwill that are essential for the successful cooperation of States.

Proceeding from the above, Mongolia believes that it is necessary and timely for the international community to identify and elaborate a set of principles to guide States in the conduct of international negotiations. In the view of Mongolia, these principles could be embodied in an international document in the form of a code of conduct of States or guiding principles containing a set of generally agreed rules necessary for the conduct of international negotiations, in full conformity with the principles and norms of

contemporary international law. The adoption of such rules would also promote justice and fairness in negotiations that at times fall victim to so-called realpolitik or power politics.

Identification and definition of the content of such principles would not per se create the necessary political will of States that is essential for successful negotiations. However, they would serve both as guidelines for conducting genuine and effective negotiations and as general criteria against which the conduct of States at negotiations could be assessed. Moreover, by defining the standard minimum for the conduct of the negotiating parties, such rules or guidelines could induce them to act accordingly and at the same time offer them some leverage for requiring other parties to act likewise. These principles would enhance the predictability of the behaviour of negotiating parties and reduce uncertainty, thus promoting an atmosphere of mutual trust at the negotiations. These principles would, therefore, contribute to enhancing the effectiveness of international negotiations as the means of managing relations, settling disputes and creating new norms of international conduct and thus would fully meet the interests of all States, large and small alike.

Mongolia believes that the appropriate forum for such elaboration would be the General Assembly, which in Article 13, paragraph 1 (a), of the Charter, is encouraged to initiate studies and make recommendations for the purpose of promoting international cooperation in the political field and encouraging the progressive development of international law and its codification.

Bearing in mind the nature of the questions raised as well as the programme for the activities for the final term (1997-1999) of the United Nations Decade of International Law, adopted by the General Assembly at its fifty-first session, it is proposed that this question be considered in the Sixth (Legal) Committee of the General Assembly as a sub-item of the item entitled "United Nations Decade of International Law".

In accordance with rule 20 of the rules of procedure of the General Assembly, a draft resolution is attached that could be considered as the basic document.

ANNEX II

Draft resolution

Guiding principles for international negotiations

The General Assembly,

Recalling the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of cooperation among States,

Bearing in mind that, according to its Charter, the United Nations is to serve as the centre for harmonizing the actions of nations in attaining its purposes,

Reaffirming the provisions of the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,

Recalling Article 13, paragraph 1 (a), of the Charter of the United Nations, in which the General Assembly is called upon to initiate studies and make recommendations for the purpose of promoting international cooperation in the political field and encouraging the progressive development of international law and its codification,

Proceeding from the fact that in their negotiations States are guided in general by the principles of contemporary international law,

Bearing in mind the increasing role that constructive and effective negotiations are playing in attaining the noble purposes of the Charter of the United Nations by contributing to the management of international relations, the peaceful settlement of disputes and the creation of new international norms of conduct of States,

Convinced that identification and harmonization of guiding principles of international negotiations would contribute to enhancing predictability for negotiating parties, reducing uncertainty and promoting an atmosphere of trust at negotiations and also to conducting effective negotiations irrespective of their level, field or form, as well as setting general criteria against which the conduct of parties at the negotiations could be assessed,

Convinced also that setting a minimum standard of conduct for negotiating parties would induce them to act in accordance therewith, as well as offer them some leverage for requiring other parties to act likewise,

1. Declares the following as guiding principles for the conduct of international negotiations:

(a) The sovereign equality of States, irrespective of their size, level of development, political or military power and their economic or political systems;

(b) Non-interference in the internal or external affairs of States in any form whatsoever;

(c) The right of States to initiate or call for negotiations;

(d) Displaying the necessary political will to attain the intended purpose of negotiations;

(e) The duty of States to negotiate in good faith and to strive for a just, equitable and early conclusion of negotiations and to reach mutually acceptable agreement or solution;

(f) Non-discrimination and the right of States to participate in negotiations affecting their vital interests or those of the international community as a whole;

(g) Compatibility of the purpose and object of negotiations with the principles and norms of contemporary international law, including the Charter of the United Nations;

(h) The duty of States to adhere strictly to the agreed principles and rules of conducting given negotiations;

(i) The duty of States to refrain from direct or indirect recourse to military, political, economic or any other types of coercion or force aimed at impeding the exercise of their sovereign rights by other States;

(j) The duty of States to cooperate in the various spheres of international relations in order to maintain international peace and security, and to promote mutually beneficial cooperation, social progress and the general welfare of nations;

(k) The duty of States to refrain from any action that might jeopardize the negotiations themselves or the general atmosphere at or around the negotiations;

(l) The duty of States to refrain from impeding negotiations by imposing irrelevant preconditions for the commencement, pursuit or conclusion of such negotiations, including raising issues unrelated to the actual object of the negotiations;

(m) The duty of States to continue to exert determined efforts aimed at arriving at negotiated solutions even in the event of failure of negotiations at some point;

(n) Any negotiations conducted under the use or threat of use of force are neither just nor lawful and the results of such negotiations shall be considered null and void;

2. Also declares that the above guiding principles are interrelated and in their interpretation and application each principle should be construed in the context of the other principles;

3. Further declares that strict observance of the above-mentioned principles is of paramount importance in the conduct of genuine negotiations, and consequently appeals to all States to be guided by these principles in their negotiations.